

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12564 of 2008

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Mahendra Prasad, son of Late Bhattan Prasad, resident of village Pain, Post Pain, P.S. Sheikhpura, District Sheikhpura.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Vishwesharaiya Bhawan, P.S. Shastri Nagar, District Patna.
2. The Finance Commissioner, Finance Department, Old Secretariat, P.S. Sachivalaya, District Patna.
3. The Chief Engineer, National Highway, Road Construction Department, Vishwesharaiya Bhawan, Bihar, Patna.
4. The Superintending Engineer, National Highway Circle, Road Construction Department, Vishwesharaiya Bhawan, Bihar, Patna
5. The Executive Engineer, National Highway Division, Gulzarbagh, Patna.
6. The Treasury Officer, Vishwesharaiya Bhawan, Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rupak Kumar
Mr. Nishant Kumar, Advocates
For the Respondents : Dr. Anand Kumar, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 19-07-2017

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for grant of first and second assured career progression (ACP) to the petitioner on completion of 12/24 years of service with all consequential benefits.

3. The short facts of the case, according to the petitioner, are that he was appointed on a class IV post as temporary *Chaukidar* in the then lateral Transport Division at Gopalganj, where he joined on 06.01.1965 and then he was adjusted against the post of temporary Peon with effect from 06.01.1967. Thereafter the petitioner was transferred and posted as Treasury Guard in the lateral Road Division



No.1, Muzaffarpur by office order dated 02.02.1972, and he joined the new post on 07.02.1972. Having passed the Hindi Noting and Drafting Examination held on 23.12.1973, the petitioner was made permanent by office order No. 2038 dated 08.12.1979 against the post of Treasury Guard. Subsequently the petitioner being a permanent Treasury Guard was made work charged Toll Clerk and posted in the office of National Highway Division, Bihar Sharif where he joined on 23.09.1980 and thereafter he was transferred and posted in the office of the Executive Engineer, National Highway Division, Gulzarbagh, Patna from where he superannuated on 31.01.2005 as Accounts Clerk. It further appears that the petitioner was taken into regular establishment from 1984 by office order No. 90 dated 12.04.2007.

4. Learned counsel for the petitioner submits that having been made permanent on the post of Treasury Guard, he acquired a lien on that post and thereafter he was transferred to work charged establishment from where he superannuated on 31.01.2005 as Accounts Clerk. It is submitted that having completed the requisite period of 12/24 years prior to his superannuation, he was entitled to first and second ACP as he retained his lien on the post of Treasury Guard which was neither suspended nor terminated.

5. Learned counsel for the respondents, on the other hand, submits that the scheme of ACP is available only to a regular employee. The petitioner was regularized in terms of office order no. 90 dated 12.04.2007 which however, was subsequently cancelled in



terms of office order no. 189 dated 06.11.2009 and as such the benefit of ACP is not available to the petitioner.

6. Having heard the parties and on careful consideration of the materials available on record, this Court finds merit in the writ petition. The order by which the petitioner was taken into regular establishment in terms of office order no. 90 dated 12.04.2007 was passed after the petitioner's superannuation on 31.01.2005 and so also the order of cancellation of the petitioner's appointment having been taken into regular establishment. The petitioner is claiming the benefit of ACP with reference to the post of Treasury Guard against which he was made permanent on 08.12.1979 (paragraph 9 of the writ petition). The respondents in paragraph 8 of their supplementary counter affidavit have unequivocally admitted that the petitioner was made permanent on the post of Treasury Guard by the said order no. 2038 dated 08.12.1979. It has also not been disputed by learned counsel for the respondents that the petitioner being made permanent will have to be considered as a regular employee.

7. In the above circumstances, this Court is of the view that the petitioner cannot be denied the benefit of first and second ACPs with reference to the post of Treasury Guard where he was made permanent by order No. 2038 dated 08.12.1979. The Superintending Engineer, National Highway, Road Construction Department, Vishwesharaiya Bhawan, Bihar, Patna (Respondent no. 4) is accordingly directed to pass appropriate orders in this regard and



ensure payment of the amount due to the petitioner with all consequential benefits within a period of three months from the date of receipt/production of a copy of this judgment.

8. The writ petition stands allowed.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24 .07.2017
Transmission Date	N.A.

